COMMUNITY-POLICE COMPLAINT MEDIATION PROJECT:
A REVIEW PAPER

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PURPOSE

In November 2010 a Memorandum of Understanding was signed between the New Orleans Police Department (NOPD) and the Independent Police Monitor (IPM). Point 15 indicates that the IPM will establish and administer a mediation program for civilian complaints, guided by best practices identified in other jurisdictions.

This Mediation Review Paper conducts an analysis of best practice in other jurisdictions regarding community-citizen mediation processes (sometimes described as citizen-police mediation). Bear with us regarding a rather dry overview of the literature, but this task is required to support the assumptions underpinning A- Project Blueprint.

POLICING STYLE

Policing style determines the quality of interactions between police and citizens. Citizens value *what* police do and *how* they do it, and successful policing depends on community support (Gau, 2010; Tyler, 2011). A 2004 National Academy of Science report stated that contemporary US police are now more effective in fighting crime, are less corrupt, and are less likely to engage in unprofessional acts such as unlawfully shooting citizens, although there are still issues in interactions with minority groups (Tyler, 2011). For example, Wagner (2001) found that confidence in policing was strongly correlated with race (59% Whites vs 38% African-Americans) and police treating all races fairly (69% Whites vs 63% Hispanic vs 36% African-Americans). In particular, Brunson (2007) found that 80% of 40 black adolescents interviewed in St Louis Missouri felt that police harassed or mistreated people in their neighborhoods, amplifying the view that police are racially biased with a concomitant reduction in police legitimacy and deficient citizen-police relations.

This Mediation Review Paper will describe modern styles of policing that are considered more effective than deterrence or crime control. Traditional policing ineffectively attempts to induce compliance by threatening punishment for law-breaking. Zero tolerance strategies are designed to create an environment of perceived constant surveillance in which the State exerts a level of power disproportionate to the alleged crimes, unevenly distributed through the social strata (Gau & Brunson, 2010). This is known as an instrumental approach to policing that relies upon "crime fighting effectiveness" through "three strikes out" policies and "tough on crime" slogans designed to obtain social control through deterrence and incapacitation. Such aggressive policing tactics undermine police legitimacy by, first, not clearly defining "disorderly behavior" leading to arbitrary law enforcement and, second, creating linchpin strategies such as stop-and-frisk which are perceived as unfair and heavy-handed (Gau & Brunson, 2010). Importantly, there is little empirical evidence to support the efficacy of such approaches. In addition, Stanko and Bradford (2000) conducted a Public Attitude Survey in England and Wales and found that community perception of how well police were doing their job was based on police effectiveness, fairness of personal treatment, and level of police community engagement, not community concerns about local disorder or crime rates.

COMMUNITY POLICING

Community policing refers to a broad and heterogeneous set of policing strategies and programs such as problem-oriented policing, community based policing, neighborhood policing, and service style policing (Benson, 2000). The basis of community policy emerged in North America and Britain in the 1970s. Initially community policy was to improve relationships between police and minority groups but was later extended to the general community to seek fundamental change in the organization and delivery of policing services

(Fielding, 2005). By 2000, over 90% of police agencies in the US reported that they engaged in community policing (Chappell, 2006). To what extent they actually engage in community policing in practice is unknown.

DEFINITION

Community policing is described as a philosophy and an organizational strategy to promote new partnerships between people and police working together to improve the overall quality of life in the area (Trojanowicz & Bucqueroux, 1994). Community policing is a balance between reactive responses and proactive problem solving to reduce and prevent crime. Community policing requires: (1) collaborative partnerships between police and citizens; (2) organizational transformation; and (3) proactive and systematic examination of identified problems to evaluate effective responses (U.S. Dept of Justice, 2011).

Collaborative partnerships encourage interaction between police and other stakeholders to expand the problem solving capacity of the police department through collaborative brainstorming and to improve public trust by means of these new relationships. Partnerships include: community members/groups, nonprofits/service providers, private businesses, and media.

Organizational transformation involves the rearrangement of organizational management, structure, personnel, and information systems to work with the community partnerships that have been created. In all, this approach aims to change the police culture to promote better relations between the community and the police. Leaders within the police department are to serve as role models, labor unions and other forms of organized labor are to be involved in the transformation, and decision making is to be decentralized to encourage front line officers to take responsibility for their actions. Moreover, policies are enacted to ensure that solutions that result from partnerships become institutionalized in policies. For example, officers are to be assigned in a long term basis to specific neighborhoods to improve the relationship between the community and police officers, facilitated by having less special units and more "generalist" officers that can be approached by the community as a situation arises. Finally, there is to be periodical evaluations that measure police performance beyond traditional indicators to include community satisfaction, improvement in quality of life and so on.

Proactive and systematic examinations occur in community policing rather than reactive measures; early mobilization of support for community policing is critical, commitment from the local government and community organizations is necessary, and high ranking police officers are called upon to display exemplary leadership and portray a new unified organizational outlook (Bureau of Justice Assistance, 1994). This means that agencies develop solutions to underlying conditions that contribute to public safety problems (i.e. addressing the underlying causes of crime).

As a result, community policing has developed an approach to problem solving called SARA (scanning, analysis, response, and assessment). *Scanning* identifies the problem, in conjunction with stakeholders, who ultimately understand and are affected by the problem. *Analysis* researches the problem with the ultimate goal of understanding it. *Response* develops solutions to reduce the problem both in the short term and in the long term. Finally, *assessment* is a reflective phase in which the response is evaluated and changed if necessary.

NEW ORLEANS 65-POINT PLAN

Implementation of a community policing model varies depending on the special circumstances of the community and the agencies involved. First, when reforming an agency program, an assessment of the current practices to see how they conform to community policing is required. Second, there must be an understanding of the concepts that involve community policing that goes beyond the agency and includes political leaders, private agencies, and the community at large. Third, collaboration between the police agency and local officials is essential for effective implementation (Bureau of Justice Assistance, 1994). Opposition to changes resulting from implementation of community policing is to be expected; employees may feel threatened and may resist. Informing officers of changes, soliciting suggestions, and encouraging feedback in all areas of implementation is essential to obtaining organizational support. Creating community support and having high ranking officials in the agency commit to community policy as a public mandate will allow the agency to *respectfully persuade* resistant officers inside the agency (Sad & Grinc, 1994).

In 2010 the NOPD released its 65-point plan providing an overview of the initiatives that have been put in to place or will be put in to place, regarding community policing. The relevant initiatives and how they relate to community policing principles are listed in Attachment 1.

TRAINING STRATEGY

Community Policing needs to be integrated to the training curricula involving techniques in leadership skills, problem solving, and team building, and include civilian personnel. Initial training should be directed to all managers and supervisors who may feel that their authority is being eroded as they will later be the ones who transmit those concepts to those they supervise. Finally, patrol officers are to receive extensive training that encourages and develops their ability to act individually. As a result, training focuses on developing, planning, organizing, problem solving, communication, and leadership skills (Bureau of Justice Assistance, 1994). Training techniques have also been criticized for lacking effective field training. Chappell (2006) argued that community policing training is centered in the academic training phase and can dissipate once officers are exposed to real world situations and the occupational culture of more experienced veteran officers.

In the NOPD 65-point plan, training includes: (1) in-service training program expanded from 26 hours to 40 hours (point 58); (2) leadership training for Police Sergeants and Police Lieutenants (point 59); advanced training in leadership for senior NOPD leadership (point 60); and mediation training (40 hours) for senior NOPD leadership and racial profiling course for sergeants and lieutenants (point 61).

EVALUATION

To be effective, community policing requires a review of the Department's leadership, policies, organizational culture, systems of accountability, and training and deployment of personnel. Advocates for community policing argue that if crime is the result of social disorganization, police departments can improve social control by creating stronger ties with the community to better regulate conduct (Lombardo, 2009). The Bureau of Justice found that community policing efforts did have a strong positive effect on increasing resident's satisfaction with the police (Lombardo, 2009). However, community policing is not without its critics; for uneven implementation, failing to live up to the standards of real police work, and for being just a public relations exercise without any substance (Chappell, 2006)

Studies regarding effectiveness of community policing have been focused mainly on crime rates, fear of crime, and police community relations. The results have generally been mixed and disappointing regardless of the particular approach implemented (Benson, 2000). For example, two of the main aspects of community policing- Neighborhood Watch schemes and long term beat assignment- have been subject to empirical evaluation. Research suggests that Neighborhood Watch schemes do not reduce crime rates and lack of interest from poor communities prevents them working in these areas. Regarding long term beat assignment or geographical long term assignment of officers, studies has shown a weak impact on crime levels (Fielding, 2005).

Community policing initiatives in eight US cities were studied by Sad and Grinc (1994) and the conclusion was that there were three problems with implementation: (1) overcoming patrol officer resistance; (2) generating interagency support for, and involvement in, community policing; and (3) generating active community involvement in community policing. A lack of understanding of community policing can also result in resentment with special community policing units, a perceived loss of enforcement abilities, and an overall ineffective implementation.

JUSTICE BASED POLICING

Justice based policing is a "next step" evolution of community policing (Rahr, Diaz, & Hawe, 2011) and a literature search in 2009 revealed over 2,500 articles on procedural justice and policing (Goodman-Delahunty, 2010). Professor Tom Tyler at New York University has conducted extensive research within the justice system regarding the legitimate use of authority and perceptions of fairness and justice. Briefly, Professor Tyler has empirically found that if the law fails to engage individuals, they will perceive a legal procedure as unfair, resulting in less respect for the law and legal authorities and so citizens are less likely to comply. Conversely, those who feel they have been treated fairly, respectfully, and with dignity have greater satisfaction and are more inclined to "obey the law". In other words, citizens who feel denigrated, embarrassed, targeted, or abused infer that police are biased and have malicious motives while citizens who are treated with respect and courtesy by police express more positive attitudes (Gau, 2010). Fairness is about police doing what works (evidence-based policing) and doing what is right (ethically-based policing).
This process of respectful interaction is described as procedural justice that enhances police legitimacy. Such an approach relies more upon citizen-police relations than policing outcomes such as publishing reduced crime statistics. Procedural justice occurs when there is participation, dignity, and trust. Participation that allows citizens to present their own view and share in decision-making results in perceptions that the procedure is fair (even if it may not influence the legal outcome). Dignity, respect and politeness acknowledge rights and values as a competent, equal citizen, and human being. Trust occurs when police officers model dignity and respect and clearly explains decisions. Citizen beliefs that the police act fairly, impartially, and with concern for citizen needs and rights translate into more positive feelings about the legitimacy of police as a law enforcement institution (Tyler, 2006). Put another way, procedural justice can be described as the "three Vs"- voice, validation, and voluntariness (Ronner, 2001). Consequently, justice based policing is concerned with the relationship between minority groups and perceptions of discriminatory policing.

Justice based policing is a strategy that improves the quality and outcome of police-citizen interactions while improving officer safety. Police legitimacy is made up of: (1) citizen perceptions that police officers are trustworthy, honest, and concerned about their well-being and (2) citizen beliefs that they should voluntarily defer to police authority and directives (Tyler, 2011). Justice based policing is effective and efficient because: (1) citizens who support the aims of the law enhance public safety and crime control; (2) citizens are vital sources of information about crime that they can share with police; and (3) better citizen-

police relationships result in higher clearance rates (Gau, 2010). Over time and across multiple interactions, justice based policing has been found to strengthen community trust and confidence in the police and increase future cooperation and lawful behavior by citizens; especially important in minority communities (Rahr et al, 2011). "Best of all, it is a benefit that takes no money and no additional manpower to accomplish- a simple "please" and "thankyou" might just be enough" (Gau, 2010, p. 249).

JUSTICE BASED POLICING IN PRACTICE

What does justice based policing mean in practice? It involves police: learning to provide citizens with opportunities to explain before decision-making; explaining how decisions are being made; treating citizens with courtesy and respect; and *allowing people to have a mechanism for complaint* (Tyler, 2011). For example, when stopping citizens, providing them with a brochure that states they have the right to: (1) have the reasons for the stop explained; (2) tell their side of the story; (3) have rules and the law explained; (4) appeal decisions they disagree with; and (5) complain about unfair treatment.

The "four ingredients" of procedural justice are alternatively described as: (1) *trust*- the community believes that an authority acts in their best interest; (2) *respectful treatment*- police behavior demonstrates that they are protective of citizen's rights, treat them with dignity, take them seriously, and value their input; (3) *neutrality*- the absence of bias and discrimination, principled conduct and decision-making, and transparency; and (4) *voice*- citizens are able to participate by expressing a view point as a symbolic gesture of being valued by authorities (Goodman-Delahunty, 2010). Or put another way, Rahr et al (2011) indicated that the "four pillars" or the LEED Model of justice based policing currently being piloted in Seattle are: (1) *listen*- allow citizens to give their side of the story, give them voice, and let them vent; (2) *vent* - explain what you're doing, what they can do, and what's going to happen; (3) *equity*- tell citizens why you are taking action; the reason must be fair and free of bias, and show their input was taken into consideration; (4) *dignity*- act with dignity.

Ideally, justice based policing should underpin the current community-oriented policing strategy in the New Orleans 65-point plan as a means of supporting a community-police mediation approach. That is, good quality citizen-police interactions- trust, neutrality, respectful treatment, and voice- will increase citizen perceptions of fair procedures and so enhance compliance with the law and improve citizen-police relationships so mediation is ultimately not required.

TRAINING STRATEGY

Justice based policing has commenced in the US. In Seattle, an interagency training strategy was to be delivered in Fall 2011 by the Washington State Criminal Justice Training Commission in partnership with the Seattle Police Department, the King County Sheriff's Office, the COPS Office, and the National Institute of Justice, University of Illinois Center for Public Safety and Justice[1] (Rahr et al, 2011). As a cultural change strategy, it was recognized that scenario-based adult learning training required: (1) leaders and supervisors to complete training to embrace procedural justice and police legitimacy; (2) line officer new recruits and in-service veterans to complete training to understand the principles and research related to procedural justice and police legitimacy; and (3) community leaders to be

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[1] See "Big changes ahead for King County deputies and Seattle police officers" in Seattle Regional Business News 25 April 2011.

included in community outreach and education campaigns to communicate information about culture change. The evaluation of the training will measure community member and police officer perceptions of the training.

EVALUATION

Procedural justice theory holds that a citizen's perceptions about the quality and fairness of the police markedly impact how she or he *feels* about the police. Unsurprisingly, a consistent predictor of citizen attitudes towards police is personal experience, the experiences of friends and family, and media stories (Gau, 2010). The perceived legitimacy of police is assessed through "trust and confidence" surveys. Numerous studies show that if citizens believe police are unbiased, neutral decision-makers who show concern- including for suspects- and do their best to make fair judgments, citizens are more likely to support police as an institution, to obey officer commands, and follow the criminal law in general (Gau, 2010; Goodman-Delahunty, 2010). Further, citizens who trust the police are more likely to collaborate with police efforts to reach out to the local community.

Professor Tyler has conducted numerous studies to test his theory regarding police legitimacy. Tyler and Huo (2002) considered police encounters in Oakland and Los Angeles comparing favorability and quality of treatment (Tyler, 2011). They found that while citizens were only 15% more willing to accept a decision that was <u>favorable</u> to them, while 70% were more willing to accept a decision that was perceived as <u>fair</u> *regardless of whether the outcome was good or bad for them personally*. Procedural fairness was central to all ethnic groups. Three public opinion surveys have been conducted in Chicago (Tyler, 2006) and New York City (Tyler, 2003; Tyler & Fagan, 2008) within different communities (see Tyler, 2011). These studies found that police legitimacy motivated compliance and cooperation, was more important than risk judgments in shaping compliance, was more important than perceptions of police effectiveness in fighting crime, and was important in engaging voluntary cooperation; procedural justice is a key precursor to police legitimacy. Randomized field experiments (the "gold standard" in research) have recently been conducted in Queensland, Australia to identify police practice related to fairness by Bennett and Mazerolle (2010) and more recently Professor Mazerolle has made a submission to the Campbell Collaboration Crime and Justice Research Group (again, the "gold standard" in research) to develop an inventory of interventions that promote legitimacy in policing. The data from these research projects was not yet available at October 2011.

Gau (2010) tested the link between perceived procedural justice and citizen perceptions of police control of serious crime in the US. A survey was completed on two occasions by 1,029 respondents (although mostly white and few minority groups) across small towns and semi-urban jurisdictions in an Eastern District of Pacific Northwest State. The outcome measure was the response to: *How much do you trust state and local police to make your community safer from gun crimes and gun violence?"* The independent variables were: the quality of contact (an average score of 3.12 on a 1-4 scale on whether the respondent had personal contact with the police in the past 12 months); illegitimate stop (16% said "yes" to illegitimate stops in the past 2 years); racial profiling (24% said "yes", the police did profile citizens by race); and trust in police (a 7/10 score for positive attitude towards police). The quality of contact was the most robust predictor of positive views of police and those who believed they had been illegitimately stopped were less likely to trust the police. These outcomes are expected because of the impact of personal experience on attitudes towards police. This study supported the view that citizens who perceive greater procedural justice during police encounters are more likely to view the police as managing crime and making the community safer.

Issues regarding police safety in applying justice based policing may be raised by stakeholders. McCluskey (2003) conducted observer ratings of police arresting citizens and found that the more coercive the commands, the less compliant the arrestee; almost twice as likely to rebel. If the police displayed ethical behavior, information-seeking, and decision-making then there was a general lowered hostility and an increase in compliance (Tyler, 2011).

On a broader scale regarding evaluation, a *National Survey of Community Satisfaction with Policing* is administered and reported annually by the Police Practitioners Working Group of the Australian and New Zealand Policing Advisory Agency (Goodman-Delahunty, 2010). The surveys conducted by the Australian Bureau of Statistics measure three of the four elements of procedural justice. In 2008 and 2009 citizens reported that: 77% "agreed" or "strongly agreed" that the police are honest (*trust*); 79% "agreed" or "strongly agreed" that police perform their job professionally (*respectful treatment*); and 66% believed the police were neutral, influenced by citizen-police interactions with minority groups (*neutrality*). Surveys of this kind can measure community perceptions of police power. It would be informative to conduct such a survey in NOLA. A current pilot project in the State of Queensland, Australia is comparing a group of ordinary driver breath test stops with a group who can voice their concerns and complete a survey (*voice*).

DISPUTE RESOLUTION CONTINUUM

In response to complaints against police, dispute resolution can occur along a continuum from a full investigation to citizen review boards to mediation. Traditional investigation processes do not involve a face-to-face meeting and so there is no opportunity for the officer to hear the citizen's side of the story and what the impact of his or her behavior was. Alternative approaches include citizen review boards and mediation programs. However, citizen review boards have served to frustrate citizens because investigations take months or even years, complainants may not be kept informed of the progress of their case, many such agencies are underfunded and understaffed, and the police department may not need to accept the review board's finding anyway (Walker, Archbold, & Herbst, 2002). For example, in 2007, the New York Civil Liberties Union released a report that stated of 7,000 complaints filed against police officers in 2006, almost 60% were dismissed without investigation (NYCLU, 2007).

MEDIATION PROGRAMS

Mediation was developed as a way to give control over the conflict resolution process back to the parties directly involved; it is one of a number of alternative dispute resolution processes. The trend toward using mediation to resolve disputes has been growing rapidly over the last 30 years in a range of areas, including employee grievances, divorce, small claims, land-use and resource issues, neighborhood disputes, and even in some criminal cases. The reasoning is that people are more likely to achieve a satisfying resolution (and possibly make peace with each other) through increased mutual understanding and cooperative problem solving than by approaching each other as enemies or seeking legal or administrative revenge for perceived wrongs. That is, mediation links naturally to justice based policing.

COMMUNITY-POLICE MEDIATION

In terms of citizen complaints against police, mediation can address alleged police misconduct without litigation costs and excessive verdicts, as an alternative to the traditional complaint-handling process. Mediation is usually a voluntary process that allows individuals to sit down face-to-face in a neutral and confidential setting to discuss their issues in a forum

facilitated by a professional mediator. Serving as a safe opportunity for dialog, mediation allows each party to be heard and to gain a better understanding of the other's perspective about an event. Unlike a courtroom, in which one side prevails over the other and blame is assigned, mediation promotes mutual understanding and learning so that both parties can prevent similar situations in the future.

Mediation is a system that facilitates citizens having their complaint heard and investigated, schedules meetings or hearings involving all parties, provides the potential of an apology, promotes a sense of vindication, and if appropriate, triggers policy change (Stern, 2005). Police-citizen mediation entails a face-to-face meeting in an attempt to informally resolve a disputed claim in which complainants generally prefer an apology or acknowledgement of their feelings rather than a punitive sanction against the police officer (Bartels & Silverman, 2005).

Mediation is particularly beneficial in resolving complaints of police racial bias. Historically, in these cases, both parties have been dissatisfied with the resolution of these complaints. Complainants believe that the agency covered up officers' racism in a questionable investigation, and officers are generally offended that they have been labeled as racist. Successful mediation of racial-bias complaints has enabled both sides to address this allegation directly with the assistance of one or two professional mediators. Beyond the direct benefits of the mediation session, this discussion can increase officer sensitivity to and community member understanding of racial issues and perceptions. Mediation allows both sides to see each other as individuals, which contributes to better relations between police and community complainants, as well as the community (Walker et al., 2002).

Unfortunately, relatively few community-police mediation programs exist in the US, and those that do exist traditionally handle only a small number of cases. Walker et al. (2002) conducted the only national study of community-police mediation programs in 2000 and found that of more than 17,000 US law enforcement agencies, there were only 100 oversight agencies, and just 16 (one-sixth) of them included mediation programs. Mediation programs were operated by civilian oversight agencies, community mediation centers, and police departments. Factors that contributed to effective mediation programs were community and police support while factors that contributed to failed mediation programs were police opposition, lack of understanding of mediation, lack of complainant incentives for participation, and lack of resources.

According to Hicks (2011) successful mediation programs require a coordinator (to assign cases to mediators, arrange mediations, maintain stakeholder relationships, and conduct outreach); stakeholder relationships (complainant, police union); mediators and professional associations (orient new mediators, acknowledge and thank, report regularly); a strategic police union relationship (single point of contact, regular check-in regarding perception of the program, public acknowledgement of officer participation, write-up in union newspaper); and outreach (website, brochures, community fairs, media, annual report). These findings have been included in the Project Blueprint.

MEDIATION BENEFITS

As the essence of community policing is to improve the relationship between complainants and officers one case at a time, mediation helps prevent an unpleasant experience with one officer from resulting in a negative perception and attitude toward the officer's agency or even the entire law enforcement community. In addition, a successful mediation can extend the repaired relationship to the community member's family and friends, some of whom might have been adversely affected by the complainant's personal experience (Walker et al., 2002).

The benefits of mediation, which should be determined in any evaluation of a mediation program, include:
- Each party has an opportunity to be heard and understood;
- Each party has the chance to hear the other's perspective and why particular actions were taken;
- Each party can give the other feedback about how to avoid similar incidents in the future;
- Community complainants can regain confidence in police services;
- Both parties exercise direct control over the quick resolution of the complaint, rather than having it decided by others; and
- The agency can resolve the complaint outside of the disciplinary process (which requires proof which is often difficult to obtain).

MEDIATION OBSTACLES

A national survey conducted by Walker et al (2002) found that obstacles can arise in establishing a program, particularly as citizen-police mediation is complex and individuals have a poor understanding of what mediation is and how it works.

Walker et al (2002) found four obstacles to successful mediation (but which can be overcome):
- Opposition from police officer and police unions, as they view the need to express guilt/apologize and lose authority, which requires dispelling myths and providing facts;
- Lack of understanding of mediation by both officers and community members which requires the IPM to visit every police district to clearly explain the purpose;[2]
- Lack of resources for mediation programs which requires the funding, recruitment and training of professional mediators; and
- Lack of incentives to participate for officers unless subject to investigation or disciplinary action as the alternative option.

MEDIATION QUALITY CONTROL

The steps for quality control are as follows (Walker et al., 2002):
- IPM staff members observed mediations regularly for the first nine months of the program to ensure that mediators meet high expectations and that cases selected for mediation were appropriate.
- IPM staff observe mediations on a periodic basis, particularly when new mediators are used or when the case involves unusual circumstances.
- IPM asks all participants and mediators to fill out surveys to evaluate the program to remove any ineffective elements.
- IPM meets on a monthly basis with the internal affairs board and the mediation team to discuss which aspects of the program can be improved, how to best expand the program, and any other relevant issues.

SUMMARY

The ultimate goal is to utilize a collaborative problem-solving approach to conflict that saves costs and repairs relationships. Whichever model is chosen, it needs a clear mandate. Cohen, Hicks, and Gonzales (2001) warned that the impetus for the creation of a program

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[2] Note that Walker et al. (2002) could find no published information regarding citizen-police mediation, other than organizational pamphlets.

may affect its design and operation. For example, statutory roots (New York's Civilian Complaint Review Board) versus programs started by monitoring agencies (the Office of the Independent Monitor in Denver implemented a citizen-police mediation program) have different outcomes.

CITIZEN-POLICE MEDIATION PROGRAMS- EXAMPLES

The following are examples of existing mediation programs in the US and overseas.

NYC CIVILIAN COMPLAINT REVIEW BOARD MEDIATION PROGRAM

DESCRIPTION

The NYC Civilian Complaint Review Board has established a mediation program offered to selected complainants and officers, depending upon the nature of the complaint and the officer's past record (New York City Civilian Complaint Review Board, 2011). Inclusion criteria are those cases in which officers allegedly used mild physical force, made threats, refused to identify themselves, stopped and questioned a civilian, and used discourteous or offensive language. The Review Board does not refer a case for mediation if the officer has been named in three citizen complaints in the past 12 months. Exclusion criteria are those cases in which officers allegedly injured someone or damaged property or if the allegations stem directly from an arrest.

The mediation program arranges a face-to-face meeting between the complainant and the officer together with a trained, neutral mediator who assists the parties to resolve the issues between them (Bartels & Silverman, 2005). Mediation is voluntary. The content of the mediation is kept confidential and cannot be used in any future judicial proceeding. If the complaint is successfully mediated, the allegation is removed from the officer's history and replaced with the word "mediated". At 2003, mediation in NYC had expanded to 91 successful cases, an increase of 20% from 2002 and an increase of almost 65% from 2001.

EVALUATION

Most citizen-police mediation programs are evaluated by satisfaction ratings for those who agreed to participate only. In an empirically robust study, Bartels and Silverman (2005) compared closed cases between 1999 and 2000 where: (1) complainants accepted mediation (N = 50); (2) complainants declined mediation (N = 164); and (3) officers accepted mediation (N = 55). The data was based on surveys completed by 52/285 surveys posted (18% response rate). Those officers who declined mediation were not included in the data analysis due to low survey return rates. In comparing complainants' experiences of mediation versus investigation, 81% felt that their real issues were discussed in comparison to 32% of complainants who participated in a full investigation; 87% felt listened to by their mediator in comparison to 32% by their investigators, and 88% agreed they trusted their mediator in comparison to 32% who trusted their investigator. Of note, those complainants who participated in mediation were more likely to be satisfied than those whose complaints were fully investigated and the average ratings of the police officers who engaged in mediation were above average. In other words, a justice based approach as previously described results in greater complainant satisfaction.

Reasons complainants gave for requesting mediation were: wanted to face the officer in person (N=12); wanted direct say in the complaint's resolution (N=6); wanted to discuss the facts of the case in a confidential atmosphere (N=6); and felt the complaint was minor (N=1). Reasons complainants gave for declining mediation were: not wishing to meet the officer (N=2); desired a more formal recognition of officer misconduct (N=3); believed that it would

be tacit acceptance of the officer not being guilty of professional misconduct (N=4); planned to follow a civil suit (N=1); were unaware that mediation was offered (N=1); and had a negative past experience with mediation (N=1).

Reasons police officers gave for choosing mediation were: wanted to have a say in the resolution of the complaint (N=10); wanted to face the complainant in person (N=7); wanted to discuss the complaint in a confidential atmosphere (N=6); avoided disciplinary penalty (N=2); showed complainant was wrong (N=1); was the least detrimental option to career (N=1); complaint was minor (N=1); and not sure (N=1). Factors that influenced officers' decisions about whether to participate were, on the one hand, avoidance of formal departmental procedures and a desire to increase civilian understanding of the police, and on the other hand, cynicism regarding mediation objectives and a belief that mediation implied guilt. These reasons indicated what may motivate or hinder officers from participating in mediation. Bartels and Silverman (2005) postulated that the removal of the allegation acts as an incentive as the vast majority of police complaints in NYC are unsubstantiated (as noted in the critique of this model by the New York Civil Liberties Union, briefly noted above).

LESSONS LEARNED

- The study by Bartels and Silverman (2005) seems to be the most comprehensive research design administered to date.
- The New York City Civilian Complaint Review Board has been severely criticized by the NYC Civil Liberties Union, but their concerns do not appear to extend to the mediation program.
- The vast majority of police complaints in NYC are unsubstantiated.
- The percentage of cases engaging in mediation is increasing.
- Reasons provided by police officers for choosing or rejecting mediation need to be examined in order to engage officers in a mediation program.

SAN FRANCISCO OFFICE OF CITIZEN COMPLAINTS- MEDIATION

DESCRIPTION

The San Francisco mediation program is lead by the Office of Citizens Complaints; an independent office that serves and is responsible for investigating all citizen complaints. The program has been established in collaboration with the Police Commission, the Police Officers Association, the Bar Association, and Community Boards (Office of Citizens Complaints, 2011). The Office of Civilian Complaints is a civilian-staffed local governmental agency that reports to the Police Commission. Cases referred to mediation are of a relatively simple nature mainly because of misunderstandings between police and citizens and where it would benefit the parties to have a face-to-face encounter. Exclusion criteria are those cases involving a substantial injury to either of the parties, allegations of sexual or racial slurs, use of force, and questions of law. A Senior Investigator will be the first person to evaluate the case and will send recommendations to a Mediation Coordinator who reviews the file and ensures that it meets appropriate eligibility criteria. To commence the mediation process both all parties must provide written consent. The mediation coordinator will provide the parties with two mediator selected from a database of pro bono certified mediators. Each party has the opportunity to veto one mediator for any reason. Mediations are conducted by two certified mediators (one is an attorney and one is not). Mediations include an Exit Survey. Upon the conclusion of the mediation the case file is sealed with a finding of "mediation" and the matter is considered resolved with no further investigation made. The mediation program had initially been rather unsuccessful drawing a nominal number of complaints every year but in 2007 a change in leadership has made this program more

successful drawing 7% of cases each year (Office of Citizens Complaints, 2011). For the 2011 second quarter, the OCC received 230 complaints of police misconduct; it sustained allegations of misconduct or failure to take action in 20 complaints against San Francisco Police officers which is a 10% sustained rate. The OCC facilitated the mediation of 15 cases which is a 7% mediation rate (Office of Citizens Complaints, 2011)

EVALUATION

Exit Surveys are provided post-mediation regarding "how did the mediation go?" and "how can we improve it?" Based on Exit Surveys completed in 2008: 96% of the parties who participated in mediation were "satisfied" or "very satisfied" with the mediation process; 96% felt that the mediation location provided a safe environment; 99% felt they had an opportunity to be heard; 90% felt the other party fully participated; 96% felt the mediators accurately identified and addressed the core issues; and 93% felt the complaint was totally or partially resolved (Office of Citizens Complaints, 2011). This outcome is an example of Tyler's justice based policing elements of trust, respectful treatment, neutrality, and voice.

LESSONS LEARNED
- Initially unsuccessful but a "change in leadership" changed mediations to 7% each year.
- Mediations are conducted by two trained mediators, one of whom is a lawyer.
- Exit Surveys find high satisfaction rates.

PITTSBURGH- ALTERNATIVE DISPUTE RESOLUTION

DESCRIPTION

In 1997, the City of Pittsburgh was the first large city to enter into a consent decree with DOJ (although it denied the allegations that its police officers were engaged in abuse of their power and authority, particularly the use of excessive force and false imprisonment). Pittsburgh now has a continuum of formal and informal dispute strategies from informal meetings with police officers and their superiors to internal investigations with the Office of Municipal Investigations to an Independent Police Monitor to public hearings before the Citizen Police Review Board (Stern, 2005).

The Citizen Police Review Board investigates and reviews complaints against police and can initiate studies, investigations, hold public hearings, and make recommendations on policy matters, including improvement of the relationship between the police and the community and police training, hiring, and discipline. The CPRB is made up of seven unpaid board members appointed by City Council and the Mayor.   Upon receipt of an Informal Complaint, by whatever means received, the Review Board notifies the Complainant in writing within 10 working days as to what actions the Review Board may take or the Complainant may take (Pittsburg Citizens Police Review Board, 1999).

The informal mediation process is relatively straightforward; at any time following the receipt of a citizen complaint, the complainant and the subject officer may choose to resolve the citizen complaint through mediation (The Rules and Operating Procedures of the CPRB refer to the aforementioned "informal meetings" as mediation). The complainant, the subject officer and the mediator shall be present at each mediation session. Procedures and guidelines for mediation are established at the beginning of the mediation process upon agreement of all participants. No record of the proceedings is made. The mediation meeting occurs no less than 30 working days from the date the Review Board receives notice of all parties' willingness to participate in mediation. Should the citizen complaint be successfully mediated, a copy of the mediation agreement is placed in the Review Board file and circulated no further. The contents of the agreement are not disclosed by the Review

Board to the Police or the Mayor, nor is it subject to public discovery. If one party fails to abide by any mediation agreement, the Citizen Complaint shall be returned to the Review Board for further action against the police officer if warranted (Pittsburg Citizens Police Review Board, 1999).

The Office of Municipal Investigations also investigates complaints of misconduct. A formal alternative to filing suit, this office mediates and investigates police misconduct complaints and addresses appropriate standards of conduct. The OMI staff reports directly to the Chief of Police whereas the staff of CPRB reports to an independent board consisting of community leaders and activists. Moreover, the OMI responds to all complaints while the CPRB requires a sworn statement to initiate an investigation. Finally, OMI is a fact finder and does not make disciplinary recommendations or decisions (Pittsburg Office of Municipal Investigations, 2011).

While not defined as mediation, informal meetings with officers and their supervisor or the Chief of Police is considered an alternative to seeking litigation or filing a complaint with the Office of Municipal Investigations or Citizen Police Review Board. The meeting reviews the merits of the allegations and results in either an apology or clarification; considered effective because often this response is what the complainant has sought and many formal complaints are diverted through this process (although Stern, 2005 could not determine how often this occurred).

EVALUATION

Stern (2005) found that complaints were filed more by minority groups (who have less resources and are less well-informed) and litigation was pursued more by white groups (who have more resources and more information). Therefore, ADR processes have not reduced costly litigation in white populations. Nevertheless, Stern concluded that ADR processes had made cost savings (although the mediation aspect was not separated out in this analysis).

LESSONS LEARNED
- Mediation processes were the result of a DOJ consent decree.
- Minority groups are more likely to consent to mediation than pursue litigation.

OREGON THE CITIZEN-POLICE MEDIATION PROGRAM

DESCRIPTION
Commencing in 2002, the Independent Police Review division mediation program was designed to provide an alternative way to resolve citizen complaints. Portland first began a pilot mediating citizen-police disputes between and 2001, operated through a Neighborhood Mediation Center. The pilot mediation program was unsuccessful as only 14 cases were mediated over the eight year period and only one of the mediations was rated worthwhile by both the citizen and officer involved (Office of the City Auditor, 2011). The principal problems with the pilot mediation program were: lack of dedicated staff and funding (the Neighborhood Mediation Center had been given the task of performing the mediations without additional resources); unclear expectations and performance measures; no clear-cut inclusion criteria for selecting cases; and mediation was so rarely used that the procedures were unclear.

In 2001 the mediation program was reassigned to the Independent Police Review division (which is advised by a Citizen Review Committee). The selection process for mediation is part of the overall intake process for all complaints received by the Independent Police Review. A complaint is defined as: a complaint by a citizen, the Director, a member or other

employee of the Bureau of alleged member misconduct. That is, complaints can be lodged by individuals other than citizens. The other exclusion criteria are those complaints in which the allegations, if sustained, would result in such serious disciplinary actions as criminal charges against, or dismissal of, the officer (e.g. allegations of criminal conduct or excessive force). The only cases categorically excluded by IPR from consideration for mediation are those involving allegations of police corruption, those with evidence of criminal conduct on the part of an involved officer, or where an officer is a witness against a complainant in a pending criminal case. If the case is eligible, it is reviewed by the Director, Independent Police Review for suitability, in discussion with the Community Relations Coordinator and the Captain, Internal Affairs. The complainant chooses mediation.

Mediation is approved in those cases where the Independent Police Review and the Police Bureau believe that it is likely to improve: (1) complainant satisfaction; (2) officer conduct; and/or (3) the contribution to community policing goals of improved citizen-police relations. The goals of mediation are to: (1) provide citizen opportunities to learn more about police procedure and perspectives; (2) sensitize officers to citizen perspectives and concerns; and (3) provide feedback to officers regarding how their conduct appears to citizens (Independent Police Review Annual Report, 2003).

If an officer agrees to mediation, there is no Internal Affairs investigation, no further disciplinary action, and no recording on the officer's service record. After the mediation, the case is closed and cannot be appealed. Because of this, the burden is upon the Independent Police Review to ensure that serious or chronic misconduct issues are not ignored or inappropriately assigned to mediation. The program aims to resolve conflicts within 45 days (Office of the City Auditor, 2011). If any party fails to participate in a scheduled mediation in good faith, the case will be returned to the IPR Director for further action in accordance with IPR's Case Handling Guidelines.

EVALUATION

In 2004, the Independent Police Review mediated 33 cases of 111 complaints that were assigned to mediation (Office of the City Auditor, 2011). The Independent Police Review administered exit surveys between 2003 and 2004 to the participants to evaluate the effectiveness of the mediation process. In other words, the evaluation did not measure the three goals of mediation stated above. Half of the citizens that were "completely satisfied" with the process and police officers showed higher "completely satisfied" rates that ranged from 70% in 2003 to 66% in 2004 and 66% of officers and 49% of citizens reported that they felt their cases were fully resolved to their satisfaction. When asked if they would recommend the mediation to others, 90% of citizens agreed and 87% of officers agreed. Not all cases assigned for mediation are actually mediated and in 2004, 39 cases that were assigned for mediation were eventually dismissed primarily because of the unavailability of the complainant- the complainant had moved and left no forwarding address, was taken into custody, or did not return calls and letters to schedule the case.

The Oregon mediation program has been criticized for its use of "closed" investigations once the case has been referred. This means that once the mediation begins the Internal Affairs Division will not continue with the investigation of the complaint and, as a result, the initial consent to mediate constitutes a measure of successful mediation. In other words, if the process starts, that in itself, constitutes a successful mediation that will result in the "closing" of the complaint. Some experts believe that this system can be used by the officers to undermine the complaint process by agreeing to mediate and then refusing to participate meaningfully (Walter, 2002).

LESSON LEARNED

- A pilot mediation program placed within the Neighborhood Mediation Center failed due to lack of staff, funding, and clear parameters.
- The mediation program was therefore reassigned to the Independent Police Review in 2001.
- Surveys in 2003-04 found that citizens and officers were satisfied with the mediation process.
- Inclusion criteria include the Department determining the likelihood of improved citizen satisfaction, police conduct, and citizen-police relations.
- The number of completed mediations were still small- 33 cases in 2003-04.

DENVER COMMUNITY-POLICE MEDIATION PROGRAM

DESCRIPTION

Having noted the success of the city auditor–initiated mediation program in Portland, Oregon described above, the Denver Office of the Independent Monitor introduced community-police mediation in December 2005. In conjunction with Internal Affairs command staff, the Independent Police Monitor identifies citizen-initiated complaints that tend towards communication-related conflicts. Inclusion criteria include excessive force complaints and racially biased policing complaints in addition traditionally considered for mediation such as discourtesy or improper procedure (Proctor, 2009). Exclusion criteria are allegations of criminal conduct against an officer, which, if sustained could result in the termination or demotion of the subject officer (Office of the Independent Police Monitor, 2011). Compared to other programs, the Office of the Independent Monitor program has not only mediated a significant number of complaints but has also compiled their data; between 2005 to 2008 the Office of the Independent Monitor had conducted 126 police-citizen mediations involving 328 participants (indicating the presence of more than one complainant at mediation sessions).

The Office of the Independent Monitor works with the Citizen Oversight Board, the Denver Police and Sheriff Departments, the Denver Law Enforcement Unions and the community to maintain a voluntary community-law enforcement mediation program. The Office of the Independent Monitor publishes protocols and guidelines for the management of the mediation program. The Office of the Independent Monitor and Internal Affairs Bureau Command approve cases for potential mediation. In cases involving a use-of-force resulting in an injury or the use of an impact weapon, or a violation that could result in the disqualification of an officer from being promoted to a higher rank, dismissal or demotion, the Chief of Police and the Manager of Safety must approve the mediation as well. Should all of these parties consent to mediation, the Monitor refers the complaint to the mediation vendor (we assume that this is currently the Denver Mediation Center) to facilitate a successful mediation between the involved parties. Assigned mediators shall make reasonable efforts to conduct mediations within two weeks of accepting a case. The target goal is to mediate within 30 days of selecting a case for mediation and not to exceed 60 days (Office of the Independent Police Monitor, 2011). Upon the completion of the mediation, the Internal Affairs Bureau Command categorizes the complaint as "IAB Decline- Mediation" and the case is closed.

EVALUATION

A recent study on satisfaction of the Denver Community-Police Mediation Program found that both officers and complainants were much more satisfied with the outcomes and processes of mediation compared to formal investigations (Proctor, 2009). The internal mediation satisfaction surveys found that: 96% of both officers and complainants found that

mediation allowed them the opportunity to explain their points of view; 87% of officers and 85% of complainants stated that mediation was either "somewhat" or "very effective" at helping them to understand the actions of the other party; and with high satisfaction rates, both complainants and officers appear to be promoting the program to others as 95% of officers and 86% of complainants were either "somewhat" or "very likely" to recommend mediation to others. However, the program has had difficulty in mediating use-of-force cases, primarily due to complainants' lack of willingness to participate. One the other hand, the program has had significant success in mediating racially biased policing complaints, which like excessive force complaints, are almost impossible to prove when the traditional investigatory process is applied.

LESSONS LEARNED

- The mediation program has been rated as satisfactory for both complainants and officers.
- Mediation is recommended by citizen and police participants, which indicates a capacity for mediation to promote organizational culture change.
- An inclusion criterion of use-of-force is applied but few complainants consent to mediation on that issue.

CONCLUSION

Attachments 2 and 3 provide examples of mediation models both in the US and overseas (Australia, Canada and the UK). The majority of programs are delivered via citizen review boards although five programs are delivered within an IPM model (Denver, San Francisco, Oregon, Canada and London).

The tables include comparative information regarding:
- Structure
- Statute
- Process
- Goal/s
- Consent- complainant and police officer
- Definition of complaint
- Parameters- inclusion criteria and exclusion criteria
- Entry process
- Timelines
- Mediator location and process
- Mediator qualifications
- Data collection and analysis
- Enforcement
- Evaluation- process and outcome.

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ATTACHMENT 1- COMMUNITY POLICING AND THE 65-POINT PLAN		
Community Partnerships	Organizational Transformation	Access to information
Partnership with DOJ for review of homicide investigation functions Local University will conduct independent analysis of NOPD's crime reporting system (point 28) Community Coordinating Sergeant (point 30) Partnership with Dr. Michael Cowan, to provide Collaborative Community Problem Solving training for officers (point 31) Cops Clergy and Community Coalition (point 32) Citizen Police Academy (point 33) "Cold calls" on businesses, this initiative looks to involve new businesses in crime prevention (point 34) Citizens Advisory Panel (point 35) Crime Walks (point 36) Lunch Meetings and walk throughs in Elementary and Middle Schools (point 37) Partnership with Nolan Rollins, Urban League of Greater New Orleans (point 38) El Protector Program, Language access for the Hispanic community Volunteer program for community members (point 43) Full cooperation with the IPM (point 50) Collaboration with the Civil Service department for hiring standards (point 56)	Streamline Senior Leadership positions (point 1) Project Safe Neighborhood Detective (point 3) Decentralized Traffic Division (point 14) Decentralized and reassigned Mounted Unit (point 15) Analysis of staffing and deployment (point 23) Open Comstat meetings to the public (point 24) Citizens Callback system (point 26) Community Coordinating Sergeant (CoCo) (point 30) Civilian Deputy Superintendent (point 43) Bicycle units and an expanded Mounted officer program (point 41) Policies regarding accountability (point 44-46) Integrity Control Officers and Use of Force Investigations Manual (point 55) Job Performance Improvement Plan (JPIP) (point 62) Training and Recruiting and transfer reorganization (points 57,58, 63) Leadership and Mediation training for senior leadership (points 59-61) Meetings with labor organizations (point 64)	Open Comstat meetings to the public (point 24) Crime reporting mechanisms open for media and public review (point 27) Revamped crime mapping website (point 29)